

dealer, or specified subject security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 15, 17, 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, 901, as amended by secs. 2, 3, 4, 11, 14, 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, 155 (15 U.S.C. 78b, 78c, 78f, 78j, 78o, 78q, 78w, as amended by Pub. L. 94-29 (June 4, 1975)); Sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat. 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. 94-29 (June 4, 1974)); sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).)

VIII. WITHDRAWAL OF PRIOR INTERPRETATION

The Securities and Exchange Commission hereby withdraws its Interpretive Response to Question 9 set forth in Securities Exchange Act Release No. 11317, 40 FR 15461, 15462.

IX. EFFECTS ON COMPETITION AND REQUEST FOR PUBLIC COMMENT

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such regulation and to balance any anti-competitive

impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has, as an initial matter, examined the proposals announced in this Release in light of the standards cited in section 23(a)(2) and is aware that certain of these proposals might be deemed to affect the ability of vendors to compete. The minimum display requirements set forth in rule 11Ac1-2 prohibit a vendor from presenting certain types of displays and require (under certain circumstances) other types of displays thereby precluding vendors from competing in terms of making available these prescribed displays. Moreover, we understand that the cost of compliance with rule 11Ac1-2 may, in some instances, be considered to have an impact on competition between existing vendors as well as on persons seeking to enter into that field. However, as a preliminary matter, we believe that these and the other perceived anti-competitive effects of these proposals are far outweighed by the regulatory purposes to be achieved by the proposals. The Commission's mandate under section 11A(a) of the Act to facilitate the establishment of a national market system and its authority granted under section 11A(c) to prevent the dissemination of fraudulent, deceptive or manipulative transaction and quo-

tation information and to assure the broad dissemination of accurate and reliable last sale and quotation data in a fair and useful format would appear to be significantly furthered by the adoption of these proposals. However, in addressing the regulatory proposals discussion in this Release, commentators should specifically address the competitive impact of this regulation so that the Commission may further evaluate its proposals in the light of section 23(a)(2).

Interested persons are invited to submit written presentations of views, data and arguments concerning the proposed rule 11Ac1-2 under the Act and the issues discussed above. Persons wishing to make such submissions should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, not later than December 15, 1978. All submissions should refer to File No. SF-759, and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30507 Filed 10-27-78; 8:45 am]

MONDAY, OCTOBER 30, 1978

PART IV



**ENVIRONMENTAL
PROTECTION
AGENCY**

**TOXIC SUBSTANCES
CONTROL ACT**

Third Report of the Interagency
Testing Committee; Receipt of
Report and Request for Comments

Registered
for
Federal

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

(FRL 995-11)

THIRD REPORT OF THE INTERAGENCY TESTING COMMITTEE

Receipt of the Report and Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: This Notice requests comments on recent additions to the Interagency Testing Committee's Priority List of chemical substances recommended for testing under the Toxic Substances Control Act.

SUMMARY: The Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act (TSCA) has transmitted its Third Report to the Administrator of the Environmental Protection Agency (EPA). This Report revises and updates the Committee's Priority List of chemicals. The Report identifies those additional chemical substances the Committee is recommending to EPA for priority consideration for promulgation of test rules under section 4 of the act.

The Third Report is being published with this Notice. The Agency invites interested persons to submit comments on the Report.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 4 of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances in order to develop data relevant to determining the risks that such chemical substances may present to health and the environment.

Section 4(e) of TSCA establishes an Interagency Testing Committee to make recommendations of chemical substances to the Administrator of EPA to be given priority consideration for test rules under section 4. The Committee's recommendations are set forth in the form of a Priority List. Up to 50 of the chemical substances on the Priority List may be designated by the Committee for which EPA must within 12 months of designation initiate rulemaking to require testing or publish in the FEDERAL REGISTER its reasons for not doing so.

The Committee's initial recommendations to the Priority List, of four substances and six categories of substances, were published in the FEDERAL REGISTER on October 12, 1977 (42 FR 55026). Revisions to that list appeared in the Committee's Second Report and were published in the FEDERAL REGISTER on April 19, 1978 (43 FR 16684).

Those revisions were the addition of four substances and four categories of substances to the Priority List.

In its Third Report, the Committee is recommending the addition of one chemical substance and two categories of chemical substances to the Priority List.

These three additions have also been designated by the Committee for EPA to initiate rulemaking within 12 months or publish its reasons for not doing so.

AVAILABILITY

The Committee's Third Report appears in the FEDERAL REGISTER following this notice.

The information dossiers used by the Committee in developing the recommendations presented in the Third Report will be transmitted by the Committee to EPA in the next few weeks.

Copies of the Third Report and/or dossiers are available from: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS-799), EPA, 401 M Street SW., Washington, D.C. 20460. Call toll free 800-424-9065; in Washington, D.C., call 554-1404.

REQUEST FOR COMMENTS

EPA invites interested persons to submit comments on the Committee's new recommendations. In view of the October 1979 statutory deadline for initiating rulemaking (or publishing reasons for not doing so), the Agency requests that comments be submitted no later than March 30, 1979.

Comments should bear the identifying notation OTS-040005 and should be submitted to Joyce Barbour, Document Control Officer, Chemical Information Division, Office of Toxic Substances (TS-793), Room 711-A, EPA, 401 M Street SW., Washington, D.C. 20460. All written comments will be available for public inspection in Room 711, East Tower, at the same address, between 8:30 a.m. and 4:30 p.m., weekdays.

Dated: October 23, 1978.

STEVEN D. JELLINEK,
Assistant Administrator
for Toxic Substances.

THIRD REPORT OF THE TSCA INTERAGENCY TESTING COMMITTEE TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

OCTOBER 1978.

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TSCA INTERAGENCY TESTING COMMITTEE

STATUTORY MEMBER AGENCIES

Council on Environmental Quality: Carroll Leslie Bastian; Nathan J. Karch, Alternate.

Department of Commerce: Orville E. Paynter; Bernard Greifer, Alternate.

Environmental Protection Agency: Warren R. Muir; Joseph J. Merenda, Alternate.

National Cancer Institute: James M. Sontag.

National Institute of Environmental Health Sciences: Hans L. Falk; Warren T. Piver, Alternate.

National Institute for Occupational Safety and Health: Jean G. French, Vice Chairperson; Vera W. Hudson, Alternate.

National Science Foundation: Marvin E. Stephenson, Chairperson; Carter Schuth, Alternate.

Occupational Safety and Health Administration: Joseph K. Wagoner; Fred W. Clayton, Alternate.

LIAISON AGENCIES

Consumer Product Safety Commission: Joseph McLaughlin.

Department of Defense: Seymour L. Friess.

Department of the Interior: Charles R. Walker.

Food and Drug Administration: Allen H. Heim; Winston deMonsabert.

COMMITTEE STAFF

Executive Secretary: Carol A. Mapes.

Secretary: Madye B. Cole.

ACKNOWLEDGMENTS

The Committee members acknowledge the support and invaluable contributions of the many individuals and groups who have significantly aided us in our work. These include:

The Federal agencies who have cooperated by providing support through the liaison members:

Clement Associates, Inc., technical support contractor;

The U.S. Environmental Protection Agency (EPA) for funding the technical support contract and the National Institute for Occupational Safety and Health, the Council on Environmental Quality, and the National Cancer Institute for assisting in the funding;

Former liaison member Robert Hehir, Consumer Product Safety Commission;

Former EPA staff member Donald G. Barnes, Office of Toxic Substances;

EPA staff members who assisted the Committee in a variety of activities, in particular: John W. Lyon, Office of the General Counsel; Ralph C. Northrop, Jr., Office of Toxic Substances; and Amy Rispin, Office of Toxic Substances.

The numerous experts who prepared presentations and material for the Committee; The industries that responded to the Contractor's request for information on specific chemical substances and categories; and

The many individuals and organizations who responded to the Committee's previous reports.

SUMMARY

A major section (Sec. 4) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce which may pose an unreasonable risk to human health or the environment. This section of the Act also provides for establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances or mixtures to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules. The Committee makes such revisions in the Section 4(e) Priority List as it determines to be necessary and transmits them to the Administrator, at least every 6 months.

As a result of its deliberations during the past six months, the Committee is revising the TSCA Section 4(e) Priority List by the addition of one individual substance and two categories of substances. Each of these new recommendations is being designated by the Committee for action by EPA within 12 months. The Committee considers these additions to be of the same priority as the previous entries. The chemical substance and categories being added to the Priority List are presented alphabetically, together with the types of studies recommended, as follows:

Substance or category	Recommended studies
Chlorinated Benzenes, Tri-, Tetra- and Penta-	Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.
1,2-Dichloropropane	Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.
Glycidol and its derivatives	Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, and epidemiology.

Information dossiers on these new entries will be forwarded to the EPA Administrator at the earliest practicable date.

THIRD REPORT OF THE TSCA INTERAGENCY TESTING COMMITTEE TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

OCTOBER 1978.

CHAPTER 1. INTRODUCTION

1.1 Background

The Interagency Testing Committee (Committee) was established under Section

4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469). The specific mandate of the Committee is to identify and recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances or mixtures in commerce which should be tested to determine their potential hazard to human health and/or the environment. The Act specifies that the Committee's recommendations to the Administrator will be in the form of a list (sec. 4(e) Priority List) to be published in the FEDERAL REGISTER. The Committee also is directed to make such revisions in the list as it determines to be necessary and transmit them to the Administrator, at least every 6 months after submission of its initial list.

The Committee has eight statutory members appointed by the Federal agencies identified for membership in Section 4(e)(2)(A) of the Act as well as a number of alternate members as permitted by Section 4(e)(2)(B)(i). In addition, the Committee has invited several other Federal agencies with programs related to the control of toxic substances to designate liaison representatives to participate in its meetings. The current Committee members, alternates, and liaison representatives are identified in the front of this report.

1.2 Previous reports

In July 1977, the Committee published a Preliminary List of 330 chemical substances and categories which it had identified for further consideration (Reference No. 1). Using previously described techniques (Reference No. 2), the Committee ultimately identified approximately 80 chemical substances and categories for detailed review and requested its technical contractor to prepare dossiers on selected chemicals and categories. The review of these dossiers, combined with the knowledge and professional judgment of the Committee members, formed the basis for the Committee's initial recommendations to the EPA Administrator (Reference No. 2) and subsequent additions to the Section 4(e) Priority List (Reference No. 3).

1.3 Committee activities during this reporting period

During the past six months, the Committee completed a detailed review of all chemicals and categories selected for dossier preparation as well as the review of a number of additional chemicals, with the following exceptions: (a) Those chemical substances and categories for which dossiers are being prepared and will be reviewed prior to the Committee's April, 1979, report; and (b) those chemicals whose further consideration has been deferred pending receipt of additional information.

1.4 Future committee activities

The Committee is currently updating its Master File of chemicals. This effort will be followed by a selection of chemicals and scoring procedures similar to those described in previous Committee reports (Reference Nos. 2 and 3). These procedures will provide one method for identifying additional chemicals for detailed review and, simultaneously, will enable a periodic re-evaluation of those chemicals which have been reviewed, but not selected for inclusion in the section 4(e) Priority List.

CHAPTER 2. AVAILABILITY OF TESTING FACILITIES AND PERSONNEL

The Committee again emphasizes its concerns about the National capability for conducting long-term tests of biological effects, as expressed in its second report to the EPA Administrator (Reference No. 3). As previously stated, the Committee's paramount concern is for the availability of adequately trained personnel. The Committee, therefore, reiterates its belief that the Civil Service Commission could do much to stimulate interest in professions such as toxicology, pathology, epidemiology, and related environmental and occupational health specialties by creating series and registers for these professions.

• The Committee supports current efforts by the Environmental Protection Agency to initiate the establishment of a Civil Service Commission series for toxicologists.

• The Committee again recommends a National survey to assess the future availability of personnel and testing facilities.

• The Committee again recommends that this survey also determine the adequacy of the supply of test organisms for assessing specific health and environmental effects.

To determine whether the number of personnel and facilities are adequate to meet the predicted needs of TSCA/EPA, there also must be some assessment of the TSCA testing requirements in relation to those of other Federal agencies and the private sector.

• The predicted competition for these facilities by users from the Federal and private sectors might be partially alleviated if some short-term, national-testing-priority scheme were developed to enable the most crucial needs to be met as additional personnel and facilities are developed.

CHAPTER 3—RECOMMENDATIONS OF THE COMMITTEE

3.1 Chemical substances and categories recommended for testing

The Interagency Testing Committee is revising the TSCA section 4(e) priority list by the addition of one individual substance and two categories of substances for which testing is recommended. These chemicals were selected after consideration of the factors identified in TSCA section 4(e)(1)(A), other relevant factors identified by the Committee, and the knowledge and professional judgment of Committee members. The recommended studies deemed appropriate for determining the potential hazard(s) of each new entry and the reasons for such recommendations are described in section 3.3 of this report. As in the case of the Committee's previous recommendations, each chemical substance and category is being designated by the Committee for action by EPA within 12 months.

Table 1 presents the complete section 4(e) priority list including the date by which the EPA Administrator must take action on each entry. As in previous Committee reports (Reference Nos. 2 and 3), the entries are listed alphabetically. The Committee considers each of its new entries to the list to be of equal importance. Therefore, each of these new entries should be given the same priority for purposes of initiating action as required under TSCA section 4(e). Unless stated otherwise, the chemical substance recommended for testing is the product to which the population is exposed.

3.2 Designated substances on which studies are planned or ongoing

The Committee is aware that it has added to the section 4(e) priority list certain chemical substances which are either currently under study or have been selected for study by other groups. Such studies may concern one or more of the effects for which the Committee has recommended testing. Set forth below is the Committee's reasoning for its past and future designation of such substances.

The Committee generally does not regard knowledge that studies are planned or ongoing as a sufficient basis to defer consideration of a substance for designation for the effect under investigation or for any other effect. The Committee's judgment as to whether a substance has been adequately tested for health and environmental effects must rest with the data that are presently available. Such data do not exist for planned studies and may be in various stages of generation for ongoing studies. In addition, the Committee is unable to predict if an ongoing study would be successfully concluded (i.e., disease, toxicity, or other unforeseen events may cause a study to be aborted). Whenever they have been identified, planned and ongoing studies are noted in the dossiers on designated substances.

TABLE 1—THE TSCA SECTION 4(e) PRIORITY LIST, ARRANGED ALPHABETICALLY

Chemical substance or category	Designated for action by
Acrylamide.....	April 1979.
Alkyl epoxides.....	October 1978.
Alkyl phthalates.....	October 1978.
Aryl phosphates.....	April 1979.
Chlorinated benzenes, mono- and di-.....	October 1978.
Chlorinated benzenes, tri-, tetra- and penta-.....	October 1979.
Chlorinated naphthalenes.....	April 1979.
Chlorinated paraffins.....	October 1978.
Chloromethane.....	October 1978.
Cresols.....	October 1978.
Dichloromethane.....	April 1979.
1,2-Dichloropropane.....	October 1979.
Glycidol and its derivatives.....	October 1979.
Halogenated alkyl epoxides.....	April 1979.
Hexachloro-1,3-butadiene.....	October 1978.
Nitrobenzene.....	October 1978.
Polychlorinated terphenyls.....	April 1979.
Pyridine.....	April 1979.
Toluene.....	October 1978.
1,1,1-Trichloroethane.....	April 1979.
Xylenes.....	October 1978.

The above statement does not mean that the Committee's consideration of substances will never include planned

or ongoing studies. If the details of a study are known and its conclusions imminent, the Committee may delay considering the substance until the results become available. When the Committee considers that a chemical substance is under sufficient assessment by other groups, it may defer consideration of the substance. Because the Committee recognizes that each case must be judged individually, it has not established formal criteria regarding the impact that planned or ongoing studies may have on its recommendations.

3.3 Reasons for Recommending Testing of the Additional Substances and Categories

Table 2 summarizes the studies recommended for each additional entry on the section 4(e) priority list. As directed by TSCA section 4(e)(1)(B) the Committee also is presenting its reasons for recommending specific types of studies. In addition to the rationales presented herein, supporting dossiers of information are being finalized and will be transmitted to the Administrator, EPA, at the earliest practicable date.

Table 2. Summary of Recommended Studies

Substance or Category	Carcino- genicity	Muta- genicity	Terato- genicity	Other* Toxic Effects	Environ- mental Effects	Epidemiology
1. Chlorinated Benzenes, Tri-, Tetra- and Penta-	X	X	X	X ^a	X	X
2. 1,2-Dichloropropane	X	X	X	X ^b	X	X
3. Glycidol and Its Derivatives	X	X	X	X ^c		X

*The systems of particular concern are as follows: a) neurological and hematopoietic;
b) reproductive and neurological; and c) reproductive.

3.3.A Chlorinated benzenes, tri-, tetra- and penta-

Recommended studies: Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.

Category identification: This category consists of: 1,2,3-trichlorobenzene (CAS No. 87-61-6); 1,2,4-trichlorobenzene (CAS No. 120-82-1); 1,3,5-trichlorobenzene (CAS No. 108-70-3); 1,2,3,4-tetrachlorobenzene (CAS No. 634-66-2); 1,2,3,5-tetrachlorobenzene (CAS No. 634-90-2); 1,2,4,5-tetrachlorobenzene (CAS No. 95-94-3); and pentachlorobenzene (CAS No. 608-93-5).

Reasons for Recommendations. *Production, release, and exposure*—Although the Committee was not able to obtain accurate production, environmental release, and worker exposure figures, one source suggests that over 1 million workers are exposed to trichlorobenzenes. The Committee also judges that a variety of sources are responsible for the observed contamination of air, water, soil and food chains by chlorinated benzenes. Possible sources of contamination include the use of chlorobenzenes as chemical intermediates and solvents in the manufacture of dyes, lubricants and pesticides as well as other uses such as transformer oils. Recent decreases in the use of polychlorinated biphenyls may result in an increase usage of trichlorobenzenes as transformer oils. Chlorinated benzenes are also present as contaminants in and degradation products of pesticides and occur in chlorinated municipal, agricultural and industrial effluents. The predicted partition coefficients of chlorobenzenes suggest that they may accumulate in biological systems. The high probability for exposure to the human population and environment of these relatively persistent and toxic substances is emphasized in the following recommendations.

Carcinogenicity: No carcinogenicity studies on tri-, tetra- and pentachlorobenzenes were found in the searched literature, although hexachlorobenzene is a demonstrated animal carcinogen. The Committee, therefore, recommends that tests be conducted to assess the carcinogenic potential of these chemicals.

Mutagenicity: Although a single mutagenicity study for 1,2,4-trichlorobenzene was negative, additional testing is needed to assess the mutagenic potential of the chlorobenzenes.

Teratogenicity: Pentachlorobenzene administered to pregnant rats reduced the mean number of live fetuses per litter and increased the incidence of sternal defects and extra ribs. Studies are recommended to assess the teratogenic potential of the chlorobenzenes.

Other toxic effects: Degeneration of liver cells and hepatic porphyria have been observed in rodents exposed to chlorobenzenes. Dose-related increases in liver to body weight ratios in highly porphyric rats were accompanied by the induction of hepatic microsomal enzymes. Monkeys given high doses of 1,2,4-trichlorobenzene showed severe weight loss and fine tremors. Guinea pigs given high doses of chlorobenzenes have been reported to convulse and die. The Committee recommends testing, with emphasis on the neurological and hematopoietic systems, to further assess the toxic effects of the chlorobenzenes.

Environmental effects: There is a paucity of information on the acute and chronic effects of tri-, tetra- and pentachlorobenzenes

on wild and domestic birds and mammals, fish, amphibians, reptiles, invertebrates, plants and algae. Since residues have been detected in aquatic situations, particular emphasis should be placed on long-term environmental studies in freshwater and marine environments with concern for the biological significance of residues and effects on reproduction, behavior and survival of fish, fish-eating birds and mammals, and food chain organisms.

Epidemiology: Since the nature of human exposure to chlorobenzenes is extremely broad, the Committee believes that epidemiological studies may be important in assessing the effects of long-term exposure to chlorobenzenes.

3.3.B 1,2-dichloropropane

Recommended studies: Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.

Substance identification: CAS No. 78-87-5. Reasons for recommendations. *Production, release, and exposure*—1,2-dichloropropane is produced in large quantities with a production rate in 1976 of 71 million pounds. Because of its widespread use as a solvent, as well as a multiplicity of other uses, 1,2-dichloropropane has a potentially high occupational exposure (over 1 million workers). Its potential use in many consumer products also may lead to wide general exposure. Little is known about the release rate of 1,2-dichloropropane into the environment.

Carcinogenicity: The testing carried out thus far on the carcinogenicity of 1,2-dichloropropane is insufficient to allow an appropriate appraisal of its carcinogenicity. The Committee, therefore, recommends that additional carcinogenicity studies be conducted.

Mutagenicity: Although positive mutagenicity tests have been reported in *Salmonella typhimurium* and in *Aspergillus nidulans* for dichloropropane, the isomer was not specified. The Committee recommends that mutagenicity testing be done specifically on 1,2-dichloropropane.

Teratogenicity: Because no information on the teratogenicity of 1,2-dichloropropane was found in the searched literature, the Committee recommends that teratogenicity tests be conducted.

Other toxic effects: Fatty degeneration of the liver and kidney and necrosis of the adrenals have been observed in experimental animals following acute, high-level exposures to 1,2-dichloropropane. Although one low-level exposure study has been reported, it is considered to be inadequate to assess the chronic effects of 1,2-dichloropropane. Since this compound is structurally similar to 1,2-dibromo-3-chloropropane, the Committee recommends that particular emphasis be placed on the reproductive and neurological effects of this chemical.

Environmental effects: In view of its volatility and high specific gravity, the ecological impact of 1,2-dichloropropane may be localized to those environments receiving continuous exposure associated with this chemical's use and disposal. The potential for bioaccumulation suggests the need for further testing to determine the biological significance of exposure to wild and domestic birds, mammals, fish, and invertebrates. Specific areas of environmental concern include: Chronic toxicity to fish and invertebrates; effects on avian and mammalian re-

production and behavior; and effects on soil invertebrates and terrestrial insects.

Epidemiology: There is no information available on chronic effects in humans exposed to 1,2-dichloropropane over an extended period of time. Because of the potentially widespread exposure, epidemiological studies may be particularly important in assessing the human health effects of 1,2-dichloropropane.

3.3.C Glycidol and Its Derivatives

Recommended studies: Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, and epidemiology.

Category identification: This category consists of glycidol (CAS No. 556-52-5) and its derivatives. Example chemicals in this category are glycidyl acrylate (CAS No. 106-90-1), glycidyl methacrylate (CAS No. 106-91-2), allyl glycidyl ether (CAS No. 106-92-3), n-butyl glycidyl ether (CAS No. 2426-08-6), para-cresyl glycidyl ether (CAS No. 2186-24-5), phenyl glycidyl ether (CAS No. 122-60-1), and the diglycidyl ether of bisphenol A (CAS No. 1675-54-3).

Reasons for recommendations.

Production, release, and exposure—Most of these commercially significant chemicals have annual production volumes in excess of 1,000 pounds (1976). Although exposure estimates are not available for all the chemicals in this category, NIOSH estimates that 105,000, 118,000, and 105,000 workers are exposed to glycidol, glycidyl ethers, and glycidyl methacrylate, respectively.

Carcinogenicity: Although glycidol and glycidyl methacrylate have been tested for carcinogenicity, neither meets current testing standards. In view of the potential alkylating properties of glycidol and its derivatives and the demonstrated carcinogenicity of certain members of this category (e.g., diglycidyl resorcinol ether and glycidyl oleate), the Committee recommends carcinogenicity studies.

Mutagenicity: Since glycidol, allyl glycidyl ether, n-butyl glycidyl ether, and phenyl glycidyl ether have been reported to be mutagenic in several assay systems, the mutagenic potential of other category members should be determined.

Teratogenicity: With the exception of negative test results on phenyl glycidyl ether, the teratogenic potentials of these compounds have not been evaluated. The Committee, therefore, recommends studies to evaluate the teratogenic potential of other compounds in this category.

Other toxic effects: Most of these chemicals are skin and eye irritants, while some induce sensitization and cross-sensitization reactions in exposed workers. A diversity of toxic effects also has been observed in experimental animals following administration of these compounds. The most frequently observed effects are CNS depression, incoordination and ataxia, although some of these compounds reportedly induce testicular atrophy and temporary sterility in rats. Adverse effects on the kidneys, liver, pancreas, and adrenals also have been observed in experimental animals. The Committee, therefore, recommends studies to evaluate the toxicity of these chemicals. The reproductive system is of particular interest.

Epidemiology: Epidemiology studies should be conducted to assess the extent of human health effects.

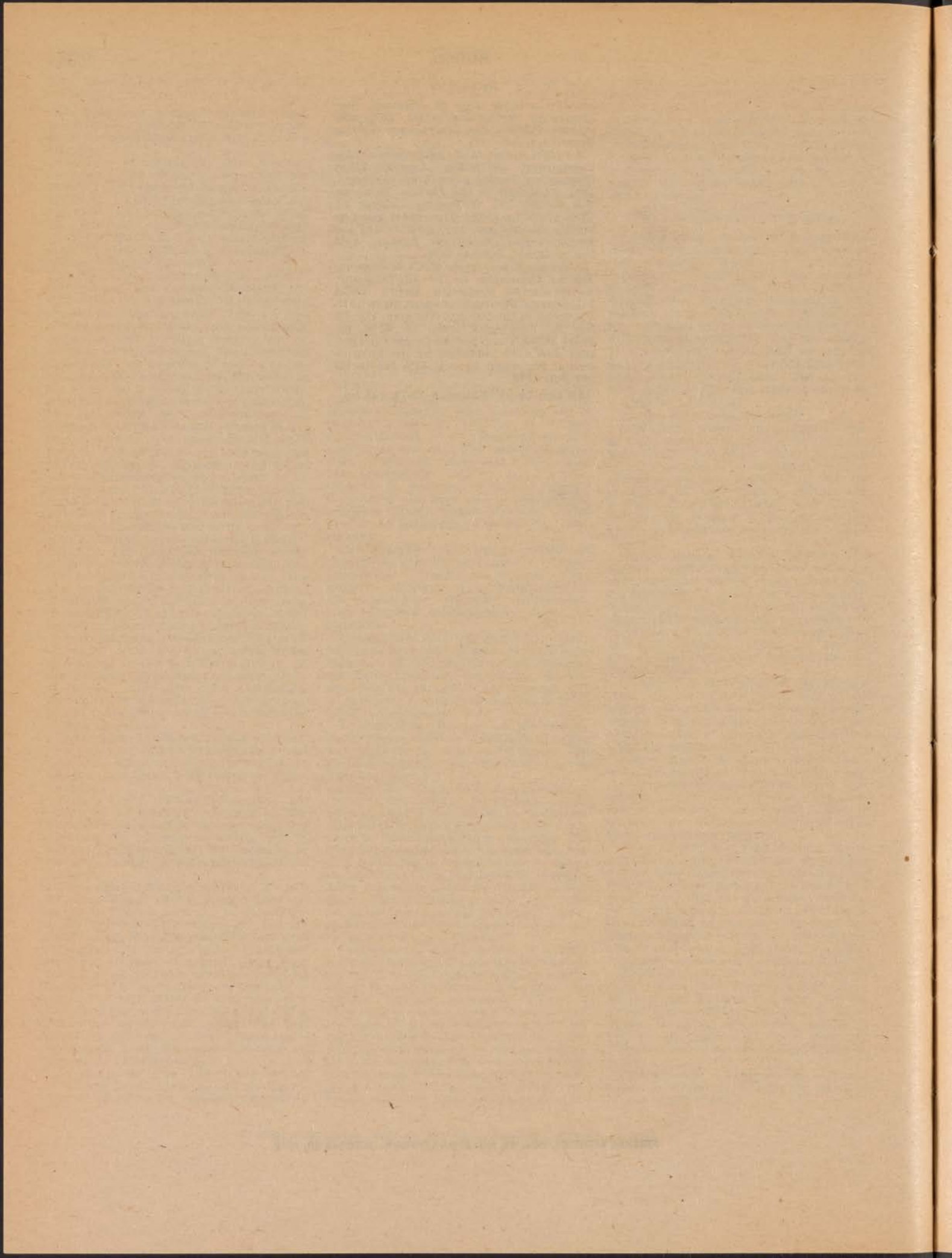
REFERENCES

1. *Preliminary List of Chemical Substances for Further Evaluation*, Toxic substances Control Act Interagency Testing Committee, July 1977.

2. *Initial Report to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee*, October 1, 1977. Published in the *FEDERAL REGISTER*, Vol. 42, No. 197, Wednesday, October 12, 1977, pp. 55026-55080. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560-10-78/001, January 1978.

3. *Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee*, April 1978. Published in the *FEDERAL REGISTER*, Vol. 43, No. 76, Wednesday, April 19, 1978, pp. 16684-16688. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560-10-78/002, July 1978.

[FR Doc. 78-30336 Filed 10-27-78; 8:45 am]



MONDAY, OCTOBER 30, 1978

PART V



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**



**REVIEW OF
APPLICATIONS FOR
HOUSING ASSISTANCE
AND ALLOCATION OF
HOUSING ASSISTANCE
FUNDS**

Final Rule

Registered
for
deposit

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-529]

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS

Final Rule

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is adopting for immediate effect revised regulations on reviewing applications for assisted housing and allocating housing assistance.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Anthony Freedman, Office of Policy Development and Evaluation, Department of Housing and Urban Development, Room 9158, 451 Seventh Street SW., Washington, D.C. 20410. Telephone 202-755-7330. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On April 24, 1978, the Department of Housing and Urban Development (HUD) published proposed amendments (43 FR 17448) to subparts A through D of Part 891, Chapter VIII, 24 CFR. Interested parties were given until May 24, 1978, to submit written comments. All comments received with respect to the proposed rules were given due consideration. As a result of the comments received, a number of changes have been made to the proposed regulations. The revisions and comment disposition are discussed below. Subparts E and F will be revised at a later date for consistency.

DEFINITIONS

In response to a comment from a nonprofit organization, the definition of applications for section 202 projects has been revised to refer to "elderly and handicapped." This is consistent with the community development block grant (CDBG) regulations (43 FR 8434) and gives recognition to the fact that handicapped needs are separate and distinct from those of the elderly.

One problem which has appeared in connection with approving applications for housing for the handicapped is that communities have met their el-

derly housing goals under the HAP's without having adequately served handicapped persons. In preparing HAP's, communities have been advised that the needs of the nonelderly handicapped should not necessarily be considered to be met or addressed even though the category covering both elderly and handicapped may have been served disproportionately when compared to family and large family housing goals. In preparing their HAP's, communities are encouraged to develop a separate narrative section on the housing needs of the nonelderly handicapped and to note goals which are set for the handicapped separately from those set for the elderly. A definition for Federal fiscal year has been added.

Other minor changes have been made in the definitions to reflect recent programmatic and organizational changes within the Department.

GENERAL APPLICABILITY

Some comments questioned the exclusion from consideration of small projects involving 12 or fewer units and housing in new communities where the Secretary determines they are necessary. Both of these exclusions are statutory and are, therefore, not subject to change. In addition, one comment suggested that language be provided to allow for local government review if the size of a project decreased by more than 12 units, since provision is made for reviews when the project increases in the same fashion. Since the primary purpose of the review is to ascertain housing assistance plan (HAP) consistency, it is considered that the outcome of the review would not be changed if the project only decreased in size. Therefore, this comment was not adopted. One commenter requested that the preamble include clarification for the field offices and local governing bodies concerning which HAP is applicable for fiscal year 1979 allocations. Therefore, we have added the following:

For the purpose of allocation of fiscal year 1979 housing funds and the review and comment for consistency of housing proposals generated by that allocation, all fiscal year 1978 community development block grant housing assistance plans are subject to this part including where appropriate: (1) Annual housing action plans for transition year housing assistance plans (§ 570.306(a)(4)); and (2) housing assistance plans for small cities CDBG recipients (24 CFR 570, Subpart F) approved under fiscal year 1978 community development block grant funding.

In response to a comment the local government is required to submit comments to the clearinghouse. A comment suggesting new or amended HAP's be sent to the A-95 clearing-

house for review was not adopted since it is beyond the scope of these regulations.

LOCAL REVIEW AND COMMENT

One comment suggested that opportunity for local reviews be required after the formal submission of an application to HUD even if previous comments were submitted. This comment has been followed. It is considered that the best interests of the Department and the local government will be served if the formal 30-day comment period is observed. However, local government comments may still be submitted at the beginning of the comment period to save processing time.

Two commenters requested a clarification of policy with respect to changes in HAP's during processing. The determination of whether the new or amended HAP will be used has been left to the discretion of the field office, taking into consideration local government comments. See § 891.203(b).

LOCAL GOVERNMENT RESPONSE

Comments were received from a variety of municipal and regional organizations raising questions regarding the limits established for local government objections. Specific areas for objections have been purposely limited by the Department in order to insure that the comments will be constructive and contribute to expeditious processing of the applications. However, the local government may object if the housing is "inconsistent with any other limiting factors set forth in the HAP." See § 891.204(b)(3).

Two commenters indicated that specific sites within the general locations may be inappropriate for various reasons (e.g., inconsistent with the locality's adopted general plan relating to zoning). Issues beyond those related to HAP consistency are addressed in detail during the project review by the Field Office. One commenter objected that the limitation to sites within the general locations was unduly restrictive for applications for housing for the handicapped. Although the comment was fully considered, it was not adopted. General locations for housing in the approved HAP's must include a sufficient number of sites to insure competitive proposals within the locality. It is considered that through the normal requirements for general locations approved in a HAP that these areas would not be restrictive to any type of housing, including housing for the handicapped.

One commenter suggested that these provisions be clarified to incorporate the 15 percent minimum housing goal requirement of § 570.306. This suggestion was not adopted since the 15 percent minimum housing goal only

applies to the establishment of the 3-year goals and not to each specific application. Another commenter suggested that an objection be included relating to applications which exceed the 1-year goal. This suggestion was also not adopted since it is contrary to the intention of the revised regulations which do not restrict variations from one year goals.

A few commenters requested clarification of the "expressly excluded" phrase, including one who recommended that the provision be clarified to indicate that arbitrary program exclusions would not be allowed. In recognition of the noted confusion, this factor has been eliminated as a basis for objection. It is covered in concept since an express exclusion in the HAP would be a limiting factor under § 891.204(b)(3).

HAP VARIATIONS

One commenter suggested that local government should have complete discretion as to when HAP goals should be amended. HAP amendments are necessary before applications which exceed the 3-year goals by more than 20 percent may be approved. This is considered reasonable and should not place an unnecessary burden on the local government. See § 891.206.

One commenter suggested that the Chief Executive should be informed by official notification when an application or applications would exceed the 3-year HAP goals. Provision for this procedure was already made in § 891.202(b)(2).

One commenter indicated that the references to housing type and household type were confusing and suggested that the basis of comparison should only be by housing type. Proportionality of goals by household type is a specific requirement for the preparation of the HAP. Proportionality by housing type, on the other hand, is not required in the HAP preparation, but rather a directive by the Department to utilize the assisted housing funds in a manner consistent with the resulting proportions by housing types in prepared HAPs.

One commenter inquired whether a field office manager may approve applications exceeding goals by 20 percent or less if the locality does not object. As detailed in § 891.206(a), field office managers may not approve such applications unless the local government provides a written statement in accordance with § 891.204(a) and the application meets the appropriate criteria.

One commenter indicated that some plans allow for a goal adjustment process short of a formal HAP amendment and suggested that the 20 percent provision should not override such local provisions. The present reg-

ulations are intended to minimize the number and frequency of need for HAP amendments in any local government. To the extent they are applicable, they should be adhered to in every locality with an approved HAP.

Two commenters noted that the language in § 891.206(b) might be construed as precluding the necessity to follow the formal HAP amendment procedures. In consideration of this comment, the language of this section has been clarified.

NOTIFICATIONS OF HUD DETERMINATION

One commenter suggested that inclusion of a provision for notifying an applicant when HAP problems arise, and the designation of an appropriate appeal mechanism. All decisions of the field offices may be appealed through appropriate channels to headquarters, if necessary.

NEED FOR HOUSING ASSISTANCE

One commenter suggested that the determination regarding the availability of adequate public facilities and services under subpart C should be a requirement in areas with HAP's as well as those without. The requirement is statutorily imposed for areas without HAP's in recognition of the likelihood that the application for housing assistance was not anticipated by the local government. On the other hand, in areas with HAP's it is presumed that the adequacy of public facilities and services is taken into consideration during the normal course of planning and goal establishment.

LOWER INCOME HOUSING NEEDS DETERMINATION

Several commenters representing a cross section of public and private interest groups wrote with suggestions and/or requested clarification of the procedures relative to the determination of housing needs under § 891.402. One commenter suggested that the age of housing should be included in the criteria. The Department has explored this option in the past and has determined that its inclusion would provide an undesirable distortion to the results. The age of the house does not conclusively indicate a housing need. Therefore, this comment has not been adopted. One commenter suggested that the language in the regulations be modified to read, "and other, objectively measurable conditions." As worded the language is as stated in the statute. However, it is not considered to preclude the use of other factors. In fact the present formula includes the factors listed, in addition to a factor for a rent/income ratio. To the extent that the factors are based on data available for the entire nation and have a direct correlation to housing

need, they may be considered for inclusion. Two commenters questioned the validity of the Census data utilized in the allocation process. Although the age of the data is subject to question, these are the only data that are available on a national basis. Population data becomes available more frequently and is updated accordingly.

Two commenters requested clarification of the high cost adjustment relative to the provision of housing among field office jurisdictions. Data for this survey is derived from a uniform survey of construction costs conducted by each field office on an annual basis.

One commenter suggested that the determination of the lower-income housing needs and the initial allocation to areas and localities is contradictory to the purpose and intent of AHOP's. It is essential that the initial determination and allocation be based on a comparative assessment using nationally available data. Only a few areas actually have an approved AHOP. Thus after the initial determination of need is made in allocating contract authority, field office managers may, pursuant to § 891.404(a)(2), make an adjustment of not more than 15 percent to reflect differing needs and goals in HAP's, State housing plans and approved AHOP's.

ALLOCATION TO HUD OFFICES

The regulations have been modified to resolve the issue which arises each year regarding how much of the available funds will be allocated on a "fair share" basis. The additional wording in § 891.403 specifies that contract authority assigned for a specific purpose from the headquarters reserve is not available for "fair share" allocation when carried over into the next fiscal year. The two most notable programs subject to this provision are the neighborhood strategy area (NSA) and AHOP programs.

Two commenters requested clarification of the basis for allocating funds directly to the field office. This provision was made to give headquarters the means to expedite the allocation process when the time to accomplish specific objectives is shorter than desirable, and reflects the recent HUD field reorganization.

One commenter suggested that some provision should be made for a locality to update goals using local data such as waiting lists for assisted housing. Goals in a HAP are based on the housing needs of the community. The needs of the community may be based on data derived on a national basis such as the decennial census, or locally generated data, subject to the review and approval of the local field office. However, in general, data based on waiting lists for assisted housing would not be acceptable since they fre-

quently include persons who are ineligible for the program, deceased, live in another jurisdiction, already reside in assisted housing, etc.

ALLOCATION TO AREAS AND LOCALITIES

Two significant revisions have been made to § 891.404(a)(4). These modifications were made after considering all comments received, previous departmental performance and an assessment of new requirements based on new programs and recent restructuring of the organization. (1) Approved AHOP's must be designated as separate allocation areas. (2) Formula entitlement block grant recipients may be established as separate allocation areas where the amount of the allocation is sufficient to achieve proportionality over a 3-year period and to provide feasible projects.

Several commenters requested further clarification of the role of the various regional, State, and areawide (AHOP) plans in establishing relative needs. It is essential that national data derived from the same source be utilized in determining the needs for lower income housing assistance under this part. Census data, albeit several years old, are the only source that fulfills the requirement. Regional and State plans even in the aggregate only cover a small geographic area and therefore are used on an adjustment basis only and at the discretion of the field office manager. Clarifying language has been added to § 891.404(a)(4) to require that approved AHOP's be used as the basis for the distribution of all contract authority within allocation areas with approved AHOP's and the allocation of contract authority by housing type and household type in those areas.

One commenter requested an exception for the section 202 program from the requirement that allocation areas be identical for all housing programs. This comment also reflects congressional concern that section 202 invitations be broad enough to support economically feasible projects. In view of the concerns expressed, appropriate language has been included to permit aggregation of allocation areas for the section 202 program.

One commenter suggested a revision in the regulations to require the Department to deliver housing in proportion to HAP goals and of a type specific in the HAP. The Department's allocation process reflects the implementation of legislation, requiring certain aspects of the process to be initiated at headquarters. After provisions are made for the set-asides established by Congress, every attempt is made at the field office level to distribute contract authority for programs that will be in concert with local HAP's. Because of the wide variance of needs and goals

throughout the country, it is not possible to assure that each locality will receive housing assistance in amounts and types specified in the HAP.

One commenter suggested a requirement to use State housing plans to adjust the county housing needs percentage. Although not a requirement, there is a provision in § 891.404(a)(4) for this type of adjustment at the discretion of the field office. In view of the number of plans which exist, their varying quality, and the fact that some have overlapping jurisdictions, the current provision is considered appropriate.

One commenter suggested that the allocation of housing resources should be based on the community's needs rather than the goals. The present allocation system is already based on the needs of the community. See § 891.404(a).

One commenter suggested the elimination of the limitation on the size of the adjustment in the housing needs percentage on the grounds that it is an unnecessarily restrictive requirement which would result in an unfair distribution of contract authority. This adjustment provides the field office some flexibility to allow for variations to reflect local HAP plans, State and regional plans and the need to promote spatial deconcentration. The adjustment reflects HUD's commitment to support as much as possible the plans prepared by local and State governments, and regional planning organizations. The 15 percent limitation has been eliminated in the case of approved AHOP's. Field office managers may request waivers of this section where it is felt that the 15 percent limitation is too restrictive.

One commenter requested clarification of the term "other relevant considerations" in § 891.404(a)(3). This phrase would include such considerations as the management capability of the housing authority as well as the status of previously approved programs. Since the considerations will vary with the individual circumstances, it is considered appropriate to be left to the discretion of the field office manager.

One commenter suggested a revision in the allocation procedure to recognize programs that are unworkable in an area. This comment received careful consideration but was not adopted in the final rule. The determination that a program is unworkable in a given area is considered a rare exception, can be taken care of under current procedures, and need not be included in the regulations.

One commenter suggested that a designated portion of the allocation area be set-aside for each county in a SMSA. Another commenter suggested that the needs of one county should

not be spread over other counties. A third commenter suggested that careful reviews be required to insure sufficient funds in allocation areas for economically feasible projects. Although a housing needs percentage is developed for each county in the county under the allocation system, it is often necessary to combine two or more localities into one allocation area in order to assure an economically feasible project. The needs of the localities are not combined; rather the contract authority is combined. Each application submitted in response to a HUD invitation must be in accordance with the approved HAP of the locality in which the project will be located. The necessity to have sufficient authority to support economically feasible projects is adequately addressed in § 891.404(d).

Numerous comments were received from representatives of regional, state and local government offices as well as profit and nonprofit organizations addressing the allocation procedures at the field office level. The transition to an allocation system based on 3-year HAP goals is expected to provide more flexibility for local governments in meeting their HAP goals on a proportional basis. In response to some of the specific concerns raised in the comments, clarifying language has been provided. The most significant clarification addresses certain limitations that may arise in some allocation areas regarding goal performance because of the necessity to insure economically feasible proposals. Allocated units are required to be proportional by housing type and by household type within each tenure type (a recent modification to provide consistency with § 570.306(c)(1) of the block grant regulation (43 FR 8434)), except that adjustments are made to reflect the remaining unsatisfied goals identified in individual HAP's during the second and third year of the 3-year period.

In response to a suggestion for Housing Finance Development Agency (HFDA) input into the actual allocation of units, the Department considers it important for the housing industry to be prepared to respond to goals identified in approved HAP's. However, in view of the time constraints on the allocation process and the divergent capacities of the HFDA's, no requirement is made for such input into preparation of the plan; however, the field office manager must discuss the plan and coordinate with the HFDA (§ 891.4.4(e)).

A one word revision recommended by a comment involved the substitution of the word "underserved" for the word "unserved" in reference to household types for which 3-year goals have not been satisfied. This sug-

gestion has been adopted in all appropriate sections of the final rule.

One commenter suggested a revision to show an additional purpose of establishing allocation areas as providing a broader geographical choice of housing opportunities for low-income families and minorities. Although the Department acknowledges that there are additional objectives to be met through the provision of housing assistance, it is considered unnecessary to include them in this section of the regulation. The provision of a broader geographical choice is a review responsibility of the field office when considering local HAP's for approval.

One commenter suggested that a provision be made for consultation with localities prior to field office allocations and that the time period to complete the field office actions be extended to 45 days. The Department recognizes the advantage of consulting with localities in preparation of allocation plans; therefore, language has been added to § 891.4 to provide for consultation with central cities that are separate allocation areas in the preparation of the plan for those areas. However, the time period for field office actions has not been extended.

In response to a commenter who questioned the need for state set-asides, it should be noted that set-asides are established by the Department in order to meet national objectives. Compensating allowances are made by the Department for areas without the agencies (e.g., HFDA's) or the programs (e.g., FmHA, Indian Housing, etc.) designated for set-asides.

Several commenters indicated that any reallocation from the targeted field office should be done only as a last resort. Although this was the intention of the reallocation procedures, additional language was added in § 891.405 to permit the provision of housing assistance to localities within the allocation area that have already met their housing goals, as a last step prior to reallocation. Once commenter suggested more field office flexibility to transfer funds from one allocation area to another. A second commenter recommended local input prior to fund reallocation. Within the guidelines established in the regulations the field office already has the flexibility to transfer funds. It is also considered that the field office carefully evaluated the fund assignment prior to the initial allocation and the decision to reallocate should not be arbitrary. When it is anticipated that the field office will maintain contact with the local government regarding the utilization of funds, no requirement will be made, rather it will be at the discretion of the field office manager.

NEED FOR IMMEDIATE EFFECT

The Department has determined that these regulations must be published for immediate effect in order to assure that housing assistance for fiscal year 1979 is provided in a manner consistent with new Department policies and regulations concerning housing assistance plans, consultation and cooperation with local governments, the provision of block grant assistance, the needs of the nonelderly handicapped and the expansion of housing opportunities. In order to meet the fiscal year 1979 goals and deadlines, HUD must immediately commence the allocation process in accordance with the provisions of this rule. Therefore, any delay in the effective date of the regulations will seriously hamper the Department's ability to operate its assisted housing programs efficiently in fiscal year 1979, and lead to increased project costs.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours in the office of the rules docket clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Issued at Washington, D.C., October 25, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing,
Federal Housing Commissioner.

Accordingly, 24 CFR, Part 891 is revised to read as follows:

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

Subpart A—General Provisions

- Sec.
891.101 Applicability and scope.
891.102 Definitions.

Subpart B—Applications for Housing Assistance in Areas with Housing Assistance Plans

- 891.201 General.
891.202 Notification of local government.
891.203 Review and comment period.
891.204 Local government response.
891.205 HUD review of applications for housing assistance.
891.206 Variation from HAP goals.
891.207 Notifications of HUD determination.

Subpart C—Applications for Housing Assistance in Areas Without Housing Assistance Plans

- 891.301 General.

- 891.302 Finding of need of housing assistance.
891.303 Notification of local government.
891.304 Review and comment period.
891.305 HUD review of applications for housing assistance.

Subpart D—Allocation of Contract and Budget Authority for Housing Assistance

- 891.401 General.
891.402 Determinations of lower-income housing needs.
891.403 Allocation to HUD offices.
891.404 Allocation to areas and localities.
891.405 Reallocation of uncommitted contract authority.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (45 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 891.101 Applicability and scope.

(a) These policies and procedures apply to the allocation of loan and contract authority and the review and approval of applications for housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), sections 235 and 236 of the National Housing Act (12 U.S.C. 1715z, 1715z-1), section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). These provisions do not apply to applications for public housing modernization or operating subsidy assistance, or to applications for converting section 23 leased housing projects either to the section 8 housing assistance payments program or to the public housing program.

(b) This part covers the policies and procedures relating to the role and responsibilities of HUD and local governments, under section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), in reviewing and making determinations with respect to applications for housing assistance made available under the housing programs specified in paragraph (a) of this section.

(c) The determinations to be made by the local government and HUD, with respect to applications for housing assistance, and HUD allocations of contract authority in proportion to the HAP goals for housing type and by household type within each tenure type shall be based on the applicable 3-year HAP period. The applicable HAP period will begin on the first day of the Federal fiscal year succeeding the approval of the HAP by HUD. Where no 3-year HAP is available, the current annual goal (e.g., small cities, single purpose HAP) will be used.

§ 891.102 Definitions.

Act, The Housing and Community Development Act of 1974.

AHOP. See areawide housing opportunity plan.

Allocation area. A municipality, county, or group of contiguous municipalities or counties or Indian areas identified by the field office or in an approved AHOP for the purpose of allocating housing assistance to support economically feasible housing projects.

Application for housing assistance. For the purpose of this part, the following definitions establish the documentation which constitutes an application for housing assistance within the meaning of section 213 of the Act.

(a) **Section 8 new construction and substantial rehabilitation.** A preliminary proposal containing the elements listed in § 880.205 of the regulations governing the section 8 housing assistance payments program—new construction (24 CFR Part 880) or the elements listed in § 881.205 of the regulations governing the section 8 housing assistance payments program—substantial rehabilitation (24 CFR Part 881).

(b) **Section 8 existing housing.** An application containing the elements listed in § 882.204 of the regulations governing the section 8 housing assistance payments program—existing housing (24 CFR Part 882) submitted by a public housing agency (PHA), including a State housing finance and development agency (HFDA). In cases where no PHA has been organized or where the PHA is unable or unwilling to implement the program, HUD's determination to administer a section 8 existing housing program shall be considered an application for purposes of this part.

(c) **Section 8 housing finance and development agencies—new construction and substantial rehabilitation projects from set-aside.** A housing finance and development agency's application for assignment of a portion of its set-aside to a specific project (form HUD 52516), if a specific site is designated. If the site is not designated, the new construction or substantial rehabilitation proposal designating the site that is submitted by the HFDA. See the regulations governing the section 8 housing assistance payments program—State housing finance and development agencies (24 CFR Part 883 Subparts A-D).

(d) **Section 8/Farmers Home Administration—new construction set-aside.** A proposal submitted by the Farmers Home Administration (FmHA), Department of Agriculture, pursuant to the regulations governing the section 8 housing assistance payments program, new construction set-aside for section 515 rural rental housing projects (24 CFR Part 883, Subparts G-H).

(e) **Section 8 housing assistance payments program—special allocations.** (1) An application containing the elements listed in § 886.105 of the regulations governing the section 8 housing assistance payments program—additional assistance program for projects with HUD-insured and HUD-held mortgages (24 CFR Part 886, Subpart A).

(2) A preliminary proposal containing the elements listed in § 886.207 of the regulations governing the section 8 housing assistance payments program—additional assistance program for the disposition of HUD-owned projects (24 CFR Part 886, Subpart B).

(3) The identification of projects meeting the eligibility criteria described in § 886.304 of the regulations governing the section 8 housing assistance payments program—section 8 existing housing assistance program for the disposition of HUD-owned projects (24 CFR Part 886, Subpart C).

(f) **Public housing (including Indian public housing).** If a specific site is designated, an application for a public housing program reservation, for the construction or acquisition of housing, submitted by a PHA (24 CFR Part 841) or Indian housing authority (24 CFR Part 805) or, if the site is not designated, either the preliminary site report submitted by the PHA or the development program identifying the proposed neighborhoods for property acquisition as specified in the applicable program regulations.

(g) **Section 235 mortgage insurance and assistance payments for homeownership and project rehabilitation.** A request for preliminary reservation of contract authority submitted by a builder or seller.

(h) **Section 236 mortgage insurance and interest reduction payments for rental projects.** The first application for project mortgage insurance either for site appraisal and market analysis (SAMA), conditional commitment, or firm commitment.

(i) **Section 101 rent supplement payments.** The first application for project mortgage insurance, either for SAMA, conditional commitment, or firm commitment which will utilize rent supplement payments.

(j) **Section 202 housing for the elderly and handicapped.** An application containing the elements listed in § 885.210 of the regulations governing loans for housing for the elderly or handicapped (24 CFR Part 885).

Approved areawide housing opportunity plan (approved AHOP). An areawide housing opportunity plan approved by HUD in accordance with subpart E to serve, to the extent practicable, as the basis for the distribution of all contract authority allocated by HUD within the plan area pursuant to subpart D.

Areawide housing opportunity plan (AHOP). A plan to implement activities developed by an APO and participating jurisdictions pursuant to subpart E, and approved by HUD, which specifically addresses areawide housing assistance needs and goals in accordance with program objective.

AHOP area. The entire jurisdiction of an APO which has prepared and received approval of an AHOP.

AHOP program objective (program objective). To encourage, facilitate, and provide a broader geographical choice of housing opportunities for lower-income households (with particular attention to families and large families) outside areas and jurisdictions containing undue concentrations of low income or minority households.

Areawide planning organization (APO). An organization authorized by law or local agreement to undertake planning under section 701 of the Housing Act of 1954 (40 U.S.C. 461) and/or OMB Circular A-95 either for a multi-county area (including county-municipality combinations) or for a single county whose boundaries are co-terminous with a designated SMSA.

Budget authority. The amount authorized by Congress to obligate the Federal Government by contract under the various assisted housing programs, with the result that the budget authority limits the maximum amount payable over the maximum term of the contracts.

Chief executive officer of a unit of general local government (chief executive officer). The elected official or the legally designated official who has the primary legal responsibility for the conduct of a unit of general local government's affairs. Examples of the "Chief Executive Officer" of a unit of local government are the elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated as the executive pursuant to law by the governing body of the unit of local government; and the chairman, governor, chief, or president of an Indian tribe or Alaskan native village.

Contract authority. The maximum amount authorized for annual payments under the assistance contracts.

Federal fiscal year (fiscal year). The official operating period of the Federal Government, beginning on October 1 and ending on September 30, as established by the Congress of the United States.

Field office manager. (a) Area office managers, and (b) those service office supervisors who have been delegated the responsibility of managers under the assisted housing programs.

Household type. The three household types are (1) elderly and handi-

capped, (2) family, and (3) large family.

Housing assistance plan (HAP). (a) A local housing assistance plan approved by HUD meeting the requirements of § 570.306 of the community development block grant regulations (24 CFR Part 570).

(b) A local housing assistance plan approved by HUD meeting the requirements of § 570.306 submitted by a local government not participating in the block grant program.

Housing program. One or more of the assisted housing programs listed in § 891.101(a).

Housing type. The three housing types are new construction, rehabilitation, and existing housing.

HUD. The Department of Housing and Urban Development.

Loan authority. The loans authorized for payment for all eligible costs relating to planning and development of a public housing or section 202 project.

Metropolitan area. A standard metropolitan statistical area (SMSA) as established by the Department of Commerce.

New communities. HUD approved new community developments under title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901) or title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501).

Participating jurisdiction. A jurisdiction (including a county or other unit of local government) within an AHOP area, with which the APO (or a county, in accordance with § 891.504(a)) has reached agreement on numerical or percentage goals for the distribution of contract authority and on activities for the implementation of the AHOP.

Program objective. See areawide housing opportunity plan program objective.

Recipient jurisdiction. Any jurisdiction (whether or not it is a participating jurisdiction) recommended by the APO in accordance with § 891.605(h) and designated by the field office to receive contract authority made available by a special allocation pursuant to subpart F.

SMSA. See metropolitan area.

Special allocation. An allocation of contract and budget authority for housing assistance made available pursuant to subpart F.

Tenure type. The two tenure types are owners and renters.

Unit of general local government (local government). Any city, county, town, township, parish, village, or other general purpose political subdivision of a State, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa or a general purpose political subdivision

thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; the Trust Territory of the Pacific Islands; Commonwealth of the Northern Marianas, and Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, Eskimos and any Alaskan native village of the United States. Such terms also include a State or local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501) or title IV of the Housing and Urban Development Act of 1968 (942 U.S.C. 3901).

Subpart B—Applications for Housing Assistance in Areas With Housing Assistance Plans

§ 891.201 General.

This subpart establishes the policies and procedures governing reviews and determinations pursuant to section 213 (a) and (b) of the Act with respect to applications for housing assistance, under the programs identified in § 891.101(a), to be provided in areas for which a HAP is applicable. This subpart does not apply to the following applications for housing assistance, and the field office is not required to submit these applications for local government review and comment:

(a) Applications for assistance involving 12 or fewer units in a single project or development.

(b) Applications for assistance with respect to housing in new community developments which the Secretary determines is necessary to meet the housing requirements in the developments.

(c) Applications for assistance with respect to housing financed by loans or loan guarantees from a State or agency thereof (including loans which also have Federal mortgage insurance or co-insurance), unless the local government in which the assistance is to be provided objects in its HAP to the exemption. Where the local government does not object in its HAP to the exemption under this paragraph, the policies and procedures governing reviews, determinations and local government comments shall be in accordance with subpart C.

(d) Applications amending previously approved applications, which initially were submitted for local government review and comments, if the amended application (1) does not increase the number of units by more than 12, (2) does not cause a change in

household type of more than 12 units, and (3) does not change the proposed location.

§ 891.202 Notification of local government.

(a) The field office shall notify the chief executive officer of the local government having a HAP, no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing), that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration. Simultaneous with the notification of the chief executive officer the field office shall also notify the A-95 clearinghouse and initiate the A-95 review process for determining consistency with state areawide and local comprehensive planning and other coordination matters.

(1) When the application is for housing assistance in an area which is covered by more than one HAP (e.g., a municipality which has a HAP located in a county which also has a HAP covering the municipality), the field office shall notify each chief executive officer.

(2) When the application is for housing assistance in several non-overlapping political jurisdictions (e.g., a scattered site project), the field office shall notify the chief executive officer of each local government having a HAP. If such application is also for housing assistance in a jurisdiction for which a HAP is not applicable, the notification shall also be in accordance with subpart C.

(3) For a section 8 existing housing application, submitted pursuant to 24 CFR part 882, the field office shall notify the chief executive officers of the localities identified in the application for existing housing as primary areas from which households to be assisted will be drawn.

(b) The notification to the chief executive officer shall:

(1) Indicate that the field office has received and is considering an application for housing assistance, identify the housing program, the housing type, the number of units by bedroom size and household type, and the proposed location(s).

(2) Indicate whether the number of units by housing type or household type exceeds the number of units in the 3-year HAP goals. In such instances, the notification letter shall indicate that the field office cannot consider the application for approval unless the requirements of § 891.206 are satisfied by the chief executive officer.

(3) Indicate that any objection to the approval of the application, based on inconsistency with the approved

HAP, must be received within 30 calendar days from the date of the field office letter.

(4) Invite the submission of any other comments, which are relevant to a determination by the field office, concerning approval of the proposed housing assistance (e.g., comments on the site; whether the project is approvable under local codes and zoning ordinances).

(5) Indicate that any objections or comments should be sent by the chief executive officer to the appropriate A-95 clearinghouse simultaneously with, or prior to, the submission to the field office.

§ 891.204 Review and comment period.

(a) The chief executive officer shall have a 30 calendar day comment period, beginning on the date of the notification letter described in § 891.202, to submit a written objection to the field office's approval of the application on the ground that it is inconsistent with the local government's HAP, and the reasons for the objection. The field office manager shall consider the comment period closed for that local government when the written objection or other comments pursuant to this subpart are received. In no case shall the field office be obligated to consider subsequent or revised objections unless the initial response indicated that additional comments would be provided and such comments are received prior to the expiration of the 30-day comment period.

(b) Section 202, section 8 and public housing applications submitted in response to an invitation, notification of fund availability (NOFA) or notification of housing assistance availability (NOHAA) shall be reviewed for consistency with the HAP on which the invitation or notification was based. If a HAP was not in effect at the time that the invitation or notification was issued, the field office shall not be required to review the applications for consistency with any subsequently approved HAP. However, where a new or amended HAP is approved prior to approval the chief executive officer may indicate that special circumstances require its consideration in the review of application(s) received. These special circumstances shall be specified in the written local government determination, and the field office shall make an independent determination as to whether or not consideration of the new or amended HAP is in the best public interest.

§ 891.204 Local government response.

(a) *No objection.* If the local government determines that it does not want to object to the application on the ground that the application is incon-

sistent with the applicable HAP, the field office may be notified in writing of this determination by the chief executive officer at any time within the 30-day comment period.

(1) In addition, the chief executive officer may submit, on behalf of the local government, in writing and within the 30-day period, other comments on the application which are relevant to a determination by the Field Office concerning the proposed housing assistance.

(2) If an application for housing assistance exceeds the total number of units for the specified housing type or household type by no more than twenty percent and there is no objection to the approval of such application, the chief executive officer should submit, on behalf of the local government, the written statement required by § 891.206(a).

(b) *Objection.* The chief executive officer, on behalf of the local government, may submit within the 30-day comment period a written objection to the approval of an application for housing assistance on the ground that the application is inconsistent with the applicable HAP, and the reasons for the objection. The objections may be based on one or more of the following:

(1) The proposed number of dwelling units exceeds the 3-year HAP goal by housing type or by household type within either tenure type.

(2) The proposed location of newly constructed or substantially rehabilitated units is not within the general locations specified in the applicable HAP, and is objectionable to the local government for specified reasons.

(3) The proposed housing assistance is inconsistent with any other limiting factors set forth in the HAP.

(c) *No response.* The local government may choose not to comment with respect to an application for housing assistance.

§ 891.205 HUD review of applications for housing assistance.

(a) *Review period.* The field office shall review each application for housing assistance to determine if it is consistent or inconsistent with the applicable HAP for the area in which the proposed housing is to be located. The field office determination shall be completed within 30 calendar days after the close of the comment period specified in § 891.203(a) or within 30 calendar days after the receipt of the comments of the local government, whichever is earlier.

(b) *Review process.* The field office finding of consistency or inconsistency shall be based on the information provided in the HAP, the application for housing assistance, and an analysis of the comments of the local govern-

ment, including comments submitted by the chief executive officer on behalf of the local government and the A-95 clearinghouse on planning consistency and coordination.

(1) HUD review when response indicates no objection. The field office may approve the application unless it makes an independent determination that it is inconsistent with the applicable HAP. The field office shall give consideration to other comments provided by the local government, if any, which are relevant to a determination concerning approval of the application for housing assistance.

(2) HUD review when objections are received. The field office shall concur in an objection by the local government unless it makes an independent determination of consistency, based on substantial evidence, that the application is consistent with the applicable HAP.

(3) HUD review when no response is received. The field office may approve the application unless it makes an independent determination that it is inconsistent with the applicable HAP.

(c) *Review factors.* The field office determination shall be based on the factors set forth in § 891.204(b) and any comments submitted by the chief executive officer on behalf of the local government. In addition, the determination shall be considered in accordance with the following requirements and procedures:

(1) The field office shall not approve an application which exceeds the total number of units by housing type or household type in the 3-year HAP goals by 20 percent or less unless the local government provides a written statement in accordance with § 891.206(a) except as provided in § 891.206(c). Accordingly, if no response has been received during the 3 day comment period and the field office has determined that the application is otherwise approvable, the chief executive officer shall be advised of this determination and shall also be advised that unless the required written statement is received within 10 calendar days, the application will not be approved.

(2) The field office shall not approve an application which exceeds the total number of units by housing type or by household type within either tenure type in the 3-year HAP goal by more than 20 percent unless the local government submits and the field office approves an amended HAP as required by § 891.206(b) except as provided in § 891.206(c).

(3) Although a specific application may be determined consistent on the basis of the review factors, the field office shall not approve the application: (i) If the application, taken into consideration together with other ap-

plications previously approved or to be approved simultaneously, exceeds the total number of units in the 3-year HAP goal for the number of units by housing type or by household type within either tenure type unless the local government has submitted a written statement or HAP amendment as required by § 891.206, or except as provided in § 891.206(c). (ii) If the application, together with previously approved applications, would make it unlikely that the housing assistance applications approved during the 3-year period would be proportionate to the 3-year HAP goal by household type. In making this determination, the field office shall give consideration to the anticipated allocation of housing assistance during the balance of the applicable 3-year HAP period.

(4) Notwithstanding the other provisions of this subpart, in the case of a local government required to emphasize a particular household type pursuant to § 570.306(c)(1)(B), the field office shall not approve an application which exceeds the HAP goals for other household types until that requirement is met.

§ 891.206 Variation from HAP goals.

The field office shall not approve an application for housing assistance which, together with previously approved applications, would exceed the total number of units in the applicable 3-year HAP goals by housing type or household type unless the following conditions are satisfied:

(a) *Applications which exceed the 3-year HAP goals by no more than 20 percent.* The field office, prior to approving an application which would exceed the 3-year HAP goals by no more than 20 percent, must receive a written statement from the chief executive officer, on behalf of the local government, indicating that: (1) There is a need for the housing assistance proposed, (2) there are or will be available in the area sufficient public facilities and services to serve the units proposed (this finding is not required with respect to an application for section 8 existing housing), and (3) there is no objection to the approval of such application for housing assistance. The field office manager shall not approve any such application unless approval is necessary: (i) To obtain a project of feasible size and type, (ii) to meet urgent unforeseen needs (e.g., displacement due to natural disasters), or (iii) to utilize residual contract authority after applications have been selected for funding, and unless approval will not create a disproportionate distribution by household type.

(b) *Applications which exceed the 3-year HAP goals by more than 20 percent.* The field office manager, prior to approving an application which would

exceed the 3-year HAP goals by more than 20 percent, must receive and approve a HAP amendment submitted in accordance with § 570.312(b).

(c) *Applications under 24 CFR Part 886.* Applications for section 8 assistance pursuant to 24 CFR, Subparts A, B, and C, may be approved without regard to variations from 3-year HAP goals. However, all other requirements and restrictions in the HAP shall apply (e.g., general location).

§ 891.207 Notifications of HUD determination.

The field office shall notify the chief executive officer and the applicant in writing of the finding made with respect to the consistency or inconsistency of the application with the HAP. The notification shall be made within 30 calendar days after the close of the comment period indicating the reasons for the determination and, as appropriate, state that the field office will, or will not, continue to process the application for housing assistance. In the event an objection is received during the comment period, this notification shall be made within 30 calendar days of receipt of the objection.

Subpart C—Applications for Housing Assistance in Areas Without Housing Assistance Plans

§ 891.301 General.

This subpart establishes the policies and procedures governing reviews and determinations, pursuant to section 213(c) of the Act, with respect to applications for housing assistance, under the programs identified in § 891.101(a), to be provided in areas for which a HAP is not applicable and to HFDA applications where the local government does not object in its HAP to exemption for these applications (see § 891.201(c)).

§ 891.302 Finding of need for housing assistance.

With respect to each application for housing assistance to be provided in an area which does not have a HAP, the field office is required to make a determination as to whether there is a need for such housing and whether there is or will be available in the area public facilities and services adequate to serve the proposed housing.

(a) The initial determination of need for housing assistance within an allocation area is made as part of the allocation process pursuant to § 891.404. In making this determination, the field office shall give consideration to the contents of any applicable State housing plan or AHOP proposing housing assistance in the area as well as generally available data with respect to population, poverty, housing

overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions pertaining to lower income housing needs.

(b) Prior to making a determination with regard to a specific application, the field office shall give the local government in which the proposed assistance is to be provided an opportunity to provide comments, during a 30 calendar day period, concerning the need for housing assistance and the adequacy of public facilities and services. If the local government finding is negative, it must be accompanied by supporting evidence.

§ 891.303 Notification of local government.

(a) The field office shall notify the chief executive officer no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing) that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration. Simultaneous with the notification to the chief executive officer, the field office shall notify the A-95 clearinghouse and initiate the A-95 review process for determining consistency with State, areawide, and local comprehensive planning and other coordination matters.

(1) When the application is for housing assistance in newly constructed or rehabilitated housing within the overlapping jurisdictions of more than one local government (e.g., a municipality which is also within a county), the field office shall notify the chief executive officer of each local government.

(2) When the application is for housing assistance in newly constructed or rehabilitated housing within several nonoverlapping political jurisdictions (e.g., a scattered site project), the field office shall notify the chief executive officer of each local government where housing assistance is proposed. If such application is also for housing assistance in a jurisdiction for which a HAP is applicable, notification shall also be given in accordance with subpart B.

(3) For section 8 existing housing applications, submitted pursuant to 24 CFR Part 882, Subparts A and B, the field office shall notify the chief executive officers of the localities identified in the application for existing housing as primary areas from which households to be assisted will be drawn.

(b) The notification to the chief executive officer shall:

(1) Indicate that the field office has received and is considering an application for housing assistance, identify

the housing program, the housing type, the number of units by bedroom size and household type, and the proposed location(s).

(2) Invite the submission, within a period of 30 calendar days from the date of the field office letter, of a statement on behalf of the local government concerning the need for housing assistance and the adequacy of public facilities and services and any other comments which are relevant to a determination by the field office concerning the proposed housing assistance (e.g., comments on the site; whether the project is approvable under local codes and zoning ordinances).

(3) Request that any comments be sent by the chief executive officer to the appropriate A-95 clearinghouse simultaneously with, or prior to, the submission to the field office.

§ 891.304 Review and comment period.

The chief executive officer shall have a 30 calendar day comment period, beginning on the date of the notification letter described in § 891.303, to submit written comments relevant to a determination by the field office concerning the approval of an application for housing assistance. The field office shall consider the comment period closed when the written comments are received. In no case shall the field office manager be obligated to consider subsequent or revised comments unless the initial response indicated that additional comments would be provided and comments are received prior to the expiration of the 30-day comment period.

§ 891.305 HUD review of applications for housing assistance.

(a) The field office shall not approve an application for housing assistance prior to either: (1) Receipt of comments pursuant to § 891.304, or (2) expiration of the 30-day comment period, whichever occurs earlier.

(b) In determining whether an application will be approved, the field office shall consider the comments provided by the local government including comments submitted by the chief executive officer on behalf of the local government and the A-95 clearinghouse on planning consistency and coordination. The field office shall make an independent determination as to whether there is a need for housing assistance and whether the facilities and services are adequate before approving the application.

(c) The field office shall promptly notify both the chief executive officer, the applicant of the HUD determination with respect to the approval or disapproval of the application for housing assistance.

Subpart D—Allocation of Contract and Budget Authority for Housing Assistance

§ 891.401 General.

This subpart establishes the policies and procedures governing the allocation of contract authority, pursuant to section 213(d) of the Act, for housing assistance under the programs identified in § 891.101(a). It describes, in sequence, the actions to be taken in allocating contract authority by the Assistant Secretary for Housing to the regional administrators or directly to the field office managers, by the regional administrators to the field office managers, and by the field office managers to allocation areas within their jurisdiction. The references to allocations of contract authority in this subpart are also applicable to loan authority for the section 202 program.

§ 891.402 Determinations of lower-income housing needs.

(a) Prior to allocating contract and budget authority for the housing assistance programs identified in § 891.101(a), the Assistant Secretary for Policy Development and Research shall determine the relative need by program type for lower-income housing assistance in each HUD field office jurisdiction. The determination of housing needs shall be based, so far as practicable, on the most recent national census data available relating to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions pertaining to lower-income housing needs. The actual statistical data elements used in determining housing needs for a specific housing program may be modified to meet the objectives of that program by taking into consideration the age, income, or other relevant characteristics of the prospective program participants.

(b) The Assistant Secretary for Policy, Development, and Research on the basis of paragraph (a) of this section shall develop a separate housing needs percentage for each field office jurisdiction. This housing needs percentage shall be adjusted to reflect the relative cost of providing housing among field office jurisdictions.

§ 891.403 Allocation to HUD offices.

(a) The Assistant Secretary for Housing shall determine the amount of contract and budget authority to be allocated by considering as available any unreserved contract and budget authority from prior fiscal years, as well as any newly appropriated contract and budget authority, for each housing program. The Assistant Secre-

tary for Housing shall consider contract and budget authority to be reserved for the purpose of this subpart when the field office manager has reserved the authority under the appropriate program regulations. Contract authority assigned by the Assistant Secretary for Housing from the reserve under paragraph (b) of this section for a particular purpose (e.g., AHOP's) but not reserved as of the end of the fiscal year may be reassigned to field offices without regard to the fair share formula.

(b) A portion of the contract and related budget authority available during any fiscal year for the housing programs listed in § 891.101(a), not to exceed 20 percent of the available contract authority on an aggregate basis, may be retained by the Assistant Secretary for Housing for subsequent allocations to specific areas and communities. Such contract authority and the applicable budget authority may be used for:

(1) Housing needs which were unforeseeable or could not practicably be measured by the formula described in § 891.402, such as natural disaster and relocation needs.

(2) Activities designed to meet lower-income housing needs as described in HAP's submitted by local governments or combinations of such units of local government, including but not limited to, activities carried out under AHOP's pursuant to subparts E and F.

(3) Applications for assistance with respect to housing in new communities.

(4) Alternative methods for meeting lower-income housing needs or implementing innovative housing programs.

(5) Housing needs of community development block grant recipients whose application approval has been conditioned or otherwise sanctioned on improved HAP performance.

(c) Contract authority, excluding that set aside pursuant to § 891.403(b), shall be allocated, so far as practicable, for each housing program in accordance with § 891.402. Of these amounts at least 20 percent, but not more than 25 percent, shall be allocated on a nationwide basis for use in nonmetropolitan areas. However, the allocation of the field office will be based upon the proportion of nonmetropolitan housing needs within the field office jurisdiction, rather than the nationwide ratio.

(d) The Assistant Secretary for Housing may allocate contract authority to the regional administrators, or directly to the field managers. If the contract authority is allocated to the regional administrator, the regional administrator shall suballocate all the authority to the field office managers within 15 working days from receipt of

the allocations from the Assistant Secretary for Housing.

(e) The total amount of contract authority to be suballocated to each field office manager shall reflect: (1) The housing needs percentages developed in accordance with § 891.402, (2) the amount of budget authority required for each housing program, and (3) the proportions by housing type reflected in the annual housing action program.

§ 891.404 Allocation to areas and localities.

(a) In establishing the amount of contract authority to be allocated to allocation areas within their jurisdiction the Field Office shall:

(1) Develop for each county, a separate housing needs percentage based on the criteria set forth in § 891.402;

(2) Multiply the amount of contract authority allocated to the field office for a specific housing program by the housing needs percentage developed pursuant to paragraph (a)(1), of this section. In the case of a county in a SMSA, the percentage shall be applied to the contract authority allocated for use in metropolitan areas, and for a county not in an SMSA, the percentage shall be applied to the contract authority allocated for use in nonmetropolitan areas. The field office may, for the section 8 and public housing programs (excluding Indian public housing), apply the housing needs percentage to the combined contract authority (metropolitan or nonmetropolitan, whichever is applicable) for both housing programs. In such instances, the ultimate use of contract authority for either section 8 or public housing in each county shall be determined by the field office on the basis of HAP's, community needs and housing strategy, and other relevant considerations.

(3) Establish regional or other allocation areas, such as SMSA's or groups of rural counties, broad enough to support economically feasible housing programs. Allocation area boundaries shall be identical for all housing programs except that where "fair share" of section 202 loan authority to an allocation area is insufficient for a feasible project size, two or more entire allocation areas may be combined into a separate section 202 allocation area for the sole purpose of advertising for applications for section 202 fund reservations. In establishing allocation areas, consideration should be given to State, county and other planning district boundaries, topographical barriers, and established community patterns as well as housing plans developed by an HFDA, and approved AHOP's developed by an APO. Each approved AHOP area shall be established as a separate allocation area. In addition, SMSA central cities, except those which are participating jurisdic-

tions in an AHOP, shall be established as separate allocation areas if the amount of contract authority would be sufficient to achieve feasible projects and meet housing type and household type goals over a 3-year period. The field office may also establish any formula entitlement block grant recipient, including an urban county, as a separate allocation area where the above feasibility test can be met.

(4) Adjust if necessary the housing needs percentage developed for each county within the allocation area to reflect housing needs and goals set forth in HAP's, and State housing plans. The housing needs percentage shall be adjusted by not more than 15 percent. However, in areas with an approved AHOP, the AHOP shall serve as the basis for the distribution of all contract authority allocated within the AHOP area, and the 15 percent limitation shall not apply.

(b) After the effective date of this subpart, priority shall be given to the extent practicable to targeting, within allocation areas, the allocation of contract authority to localities which have previously been underfunded relative to their needs and the funding of the needs of other localities in that allocation area.

(c)(1) When the amount of contract authority for each allocation area has been established, the field office shall develop a matrix indicating a distribution of units by housing type and household type within tenure type. This allocation plan shall be prepared for each allocation area using housing assistance plans, approved areawide housing opportunity plans, and data developed in the field for units of general local government not having a housing opportunity plan. For those central cities and other entitlement recipients which are established as separate allocation areas under paragraph (a)(4) of this section, the field office shall consult with the chief executive officer or his representative in the preparation of the allocation plan. To the maximum extent practicable, the number of units in the allocation plan shall be proportionate by housing type and household type within each tenure type to the 3-year goals in the annual housing action program identified in HAP's and goals in AHOP's prepared pursuant to subpart E and approved by HUD. For those allocation areas with an approved AHOP under the provisions of subpart E, the approved AHOP shall serve, to the extent practicable, as the basis for allocation of contract authority by housing type and household type.

(2) In some allocation areas, project feasibility and the amount of the allocation may limit the utilization of the annual allocation to only one housing

type within the 3-year goals. The determination, however, of the number of units for a specific allocation area must take into consideration the proportion of units previously approved by household type. If as a result of this consideration, the field office finds that the proposed allocation would make it unlikely that the housing assistance provided in the 3-year period would be proportionate to the 3-year HAP goal, contract authority shall be made available in such allocation areas only for those household types that have been underserved during the applicable period. Consideration must also be given to the amount of budget authority available to ensure the feasibility of approving applications for housing assistance.

(d) Where contract authority allocated to an allocation area pursuant to paragraph (a) of this section is not adequate for a feasible project, the field office may either: (1) Divert the contract authority from such allocation area and use it in another, (2) allocate additional contract authority from another allocation area so sufficient authority is available for a feasible project or (3) combine allocation areas. Future allocations shall be adjusted to reflect these actions.

(e) The Assistant Secretary for Housing may direct that contract authority be set aside for use by an HFDA or in conjunction with the FmHA program. In such instances, the field office shall meet with the officials from HFDA or FmHA to reach agreement on their participation in the allocation plan which has been developed in compliance with paragraphs (a) and (d) of this section. The field office shall assure that the total contract authority planned for an allocation area by the HFDA, FmHA, and HUD will provide for units by housing type and household type as reflected in applicable HAP's or AHOP's and be consistent with allocation plans. If agreement cannot be reached, the field office manager shall notify the Regional Administrator, who shall resolve the differences in a manner consistent with the requirements of this paragraph. The Regional Administrator shall coordinate the use of any HFDA or FmHA set-aside when more than one field office jurisdiction is involved.

(f) The field office manager shall determine the number of units by housing program, housing type and household type for which HUD will invite applications, after considering to what extent the goals for an allocation area will be met by the HFDA or FmHA.

(g) The field office managers shall complete the actions set forth in paragraphs (a) through (f) of this section within 30 days from receipt of their suballocations.

(h) The field office manager shall make public as soon as possible:

(1) The total contract authority allocated to the field office for SMSA's and non-SMSA's for each housing program;

(2) The initial distribution of authority to each allocation area;

(3) The approximate number of newly constructed, rehabilitated and existing units such authority could support;

(4) The amount of any HFDA or FmHA set-aside; and

(5) A tentative schedule for inviting the submission of applications in each allocation area.

(i) If application for housing assistance are not received in proportion to the housing types identified in the field office allocation plan, the field office shall make every effort to encourage the submission of applications for those housing types that have not been used. If applications for existing units would not use the contract authority designated for the existing housing program, such contract authority shall be used for inviting new construction or substantial rehabilitation applications within the same allocation area to meet underserved household type goals. If applications for new construction or substantial rehabilitation would not use the available contract authority, such contract authority shall be moved between those two housing types and, if sufficient applications are still not forthcoming, shall be reallocated to another allocation area pursuant to § 891.405.

(j) If applications for housing assistance are not received in proportion to household types identified in the field office allocation plan, the field office shall make every effort to encourage the submission of applications (including

changes in housing type) for those household types that have been underserved. If approvable applications are still not forthcoming, housing assistance may be provided to localities within the allocation area that have already met their goals in a proportionate manner. Any contract authority remaining after pursuing these alternatives shall be reallocated to another allocation area pursuant to § 891.405. Reallocations shall be consistent with the objectives of this § 891.404.

§ 891.405 Reallocation of uncommitted contract authority.

(a) If the field office manager determines that the allocation of contract or budget authority for a particular allocation area is not likely to be used during the fiscal year, the authority may be reallocated in the same fiscal year to another area where it is likely to be used.

(b) If the Regional Administrator or Assistant Secretary for Housing determines that the allocation of contract or budget authority suballocated to a field office is not likely to be used during the fiscal year, the authority may be reallocated in the same fiscal year to another field office where it is likely to be used.

(c) Only the Assistant Secretary for Housing may reallocate contract authority among Regional Administrators.

(d) In addition to meeting the requirements of § 891.403(c) any reallocations made pursuant to this paragraph must be consistent with the allocation of contract authority for a specific housing program, any established set-asides and HAP requirements and conditions as well as any additional requirements established by the Assistant Secretary for Housing.

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